BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

In the Matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992 Uniform Rate-Setting Methodology	))))))))	CS Docket No. 95-174

**JOINT REPLY COMMENTS OF TELE-COMMUNICATIONS, INC.
AND
CONTINENTAL CABLEVISION, INC.**

WILLKIE FARR & GALLAGHER
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20036
(202) 328-8000

Their Attorneys

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Continental Cablevision, Inc. and Tele-Communications, Inc. (hereinafter "MSOs") hereby file their joint reply comments in the above-captioned proceeding in response to the Notice of Proposed Rulemaking ("Notice") released on November 29, 1995.[1]

I. INTRODUCTION AND SUMMARY

In their initial comments, MSOs proposed a straightforward approach to setting uniform rates across multiple franchise

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[1] In re Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992 -- Rate Regulation, Uniform Rate-Setting Methodology, FCC 95-472, released November 29, 1995 ("Notice").

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areas.[2] Under this proposed approach, cable operators would be permitted to set uniform rates in franchises where both parts of the following two-part test are met:

(1) the franchises have a "substantially similar" number of regulated channels, i.e., where the regulated channel count for each franchise in the group is within either 10% or two channels of the franchise in the group with the highest regulated channel count; and

(2) the total of current BST, CPST, and (where applicable and at the operator's option) MPT rates in each franchise is no more than 5% higher than the weighted average uniform rate for the group.

Where an operator wishes to set uniform rates for a group of franchise areas which do not meet the above two-part test, the Commission should entertain operator proposals for uniform rate-setting on a case-by-case basis. In addition, MSOs support the proposal of Cole, Raywid and Braverman that cable operators be allowed to create uniform rates for one tier of service while leaving other tiers non-uniform.[3]

MSOs support this methodology as the most efficient and equitable way to bring the benefits of uniform rate-setting to subscribers, regulators, and cable operators. Moreover, as demonstrated below, this methodology addresses each of the concerns about uniform rate-setting raised in the comments. For example, by requiring that all franchise areas that will be grouped together for uniform rate-setting purposes have regulated

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[2] See Joint Comments of Tele-communications, Inc. and Continental Cablevision, Inc., at 4-7 ("MSOs' Comments").

[3] See Comments of Cole, Raywid and Braverman at 8 ("CRB Comments").

channel counts <u>and</u> rates that are substantially similar, the MSOs' proposal will minimize rate increases in any particular franchise area. In addition, MSOs' proposal will:

- minimize consumer confusion;
- produce the "equalization" (<u>not</u> the unreasonable cross subsidization) of rates across multiple, similarly-situated franchise areas;
- facilitate the broader dissemination to consumers of more easily understood pricing information;
- enable consumers to more efficiently compare cable rates with rates of competing MVPDs; and
- maintain LFAs' ability to negotiate for and enforce franchise-specific requirements.

In short, none of the concerns raised by the commenters should dissuade the Commission from immediately adopting a uniform rate methodology in accordance with the MSOs' proposal.

II. RESPONSES TO SPECIFIC ARGUMENTS RAISED BY LFAS

The majority of commenters fully support the Commission's proposal to allow uniform rate-setting across multiple franchise areas.[4] Perhaps most significant was the support of the

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4 <u>See</u> Comments of the Massachusetts Cable Television Commission ("MCTC Comments"); Comments of the New Jersey Board of Public Utilities ("NJ BPU Comments"); Comments of the National Cable Television Association, Inc.; Comments of Blade Communications, Inc. ("Blade Comments"); Comments of Adelphia Communications Corporation ("Adelphia Comments"); Comments of the Ohio Cable Telecommunications Association; CRB Comments; Comments of Cablevision Systems Corporation ("Cablevision Comments"); Comments of MediaOne ("MediaOne Comments"); Comments of Time Warner Cable ("Time Warner Comments").

By contrast, only four commenters strictly opposed uniform rates. <u>See</u> Comments of The City of Rock Hill, SC ("City of Rock Hill Comments"); Comments of The Cities of Cape Coral,
(continued...)

Massachusetts Cable Television Commission (the "MCTC"), which volunteered itself as a "test state" for the Commission's uniform rate proposal.[5] MSOs applaud MCTC's innovative offer. MCTC's endorsement is a compelling testament to the many advantages to implementing a uniform rate-setting methodology and should be accorded substantial weight by the Commission.

A. The MSOs' Proposal Precludes Significant Rate Increases.

The most prevalent concern expressed by LFA commenters was that uniform rate-setting might result in large rate increases for some subscribers.[6] If the Commission adopts the MSOs' proposal, this will not be an issue.

Because the MSOs' proposal requires that all franchise areas in the uniform rate calculation offer the same or nearly the same number of regulated channels and that the rates of such franchise areas vary by no more than 5% from the weighted average uniform rate for the group, the potential rate swings among the franchise

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[4](...continued) Greenacres, Lantana, Miami, North Palm Beach, and Pensacola, Florida ("Florida LFAs Comments"); Comments of the National Association of Telecommunications Officers and Advisors ("NATOA Comments"); Initial Comments of Ameritech New Media Enterprises, Inc. ("Ameritech Comments").

[5] See MCTC Comments at 14-15.

[6] See, e.g., Florida LFAs Comments at 3-4; NATOA Comments at 4-5; NJ Ratepayer Advocate Comments at 5-6 (not opposing uniform rates per se but opposing any methodology that results in BST rate increases); City of Rock Hill Comments at 2-3.

areas in the group will be modest.[7] For example, in the sample application of the MSOs' methodology attached to MSOs' Comments, uniform rates were derived in a 61-franchise area region with no subscriber experiencing a combined BST-CPST rate increase of more than 1.84%.[8]

Equally importantly, under the MSOs' approach, many subscribers will experience rate decreases. For example, in the same 61-franchise area sample region, 34% of subscribers (i.e., 57,594 of 169,840) would experience rate decreases of at least 1.7% and as much as 4.69%.[9]

B. Uniform Rate-Setting Will Not Cause Unreasonable "Cross Subsidization," But Rather Beneficial Equalization of Disparate Rates That Are an Unintended Consequence of Rate Regulation.

Contrary to the claims of certain commenters, allowing cable operators to implement uniform rates would not result in unreasonable "cross-subsidization."[10] Rather, it will simply allow cable operators to equalize their rates in similarly-

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[7] Indeed, in the telephony realm, the Commission has specifically stated that a 5% limit on rate increases is sufficient to protect consumers against shocking or disruptive rate increases. See, e.g., Policy and Rules Concerning Rates for Dominant Carriers, 4 F.C.C.R. 2873, 3065-3067 (1989)(adopting a 5% rate increase limit as sufficient to protect consumers' interest in having rate stability and avoiding large rate increases).

[8] See MSOs' Comments, Exhibit at 3.

[9] Id.

[10] See, e.g., Florida LFAs Comments at 3; NATOA Comments at 5-6; NJ Ratepayer Advocate Comments at 5 (supporting uniform rates but opposing any methodology which results in BST subscribers subsidizing upgrades in other franchise areas); City of Rock Hill Comments at 2-3.

situated franchise areas that heretofore, largely as an unintended accident of rate regulation, have been forced to charge different rates.

Moreover, the channel count and rate constraints built into the MSOs' proposal will minimize the rate adjustments resulting from the rate equalization process and thus, for example, would prevent an operator from including a high-cost, upgraded franchise area in the same uniform rate region as franchise areas with substantially lower rates.

C. Uniform Rates Will Reduce Subscriber Confusion.

NATOA's concern that uniform rate-setting would increase subscriber confusion[11] is at odds with the experience of LFAs that have already implemented some level of uniform rate-setting and which reported positive results in comments in this proceeding. For example, the New Jersey Board of Public Utilities supports uniform rate-setting based on the positive experience it has had in New Jersey.[12] Similarly, the MCTC reports that its implementation of state-wide uniform equipment rates has received substantial positive feedback, and it believes that uniform service rates will similarly improve subscriber awareness about current and future rates.[13] The Commission should give substantial weight to the positive results of these real-world experiences.

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[11] See NATOA Comments at 4-5.

[12] See NJ BPU Comments at 2.

[13] See MCTC Comments at 2, 7.

Moreover, if the Commission adopts the MSOs' proposal, any potential for subscriber confusion will be further reduced because under this approach: (1) in many instances uniform rates may be established without the need for channel restructurings; and (2) the rate adjustments resulting from the uniform rate-setting process will be modest.[14]

D. The MSOs' Proposal Will Not Affect An LFA's Ability To Negotiate For PEG or Other Franchise-Specific Requirements.

The Florida LFAs argue that uniform rates will limit the ability of LFAs to bargain with cable operators for franchise-specific benefits such as PEG services.[15] The Florida LFAs claim that, because uniform rates will spread such costs across multiple franchise areas, LFAs would either have to forego demanding these services or tolerate cross-subsidization. This problem is not a concern under the MSOs' proposal.

Under the MSOs' proposal, the ability of LFAs to negotiate for franchise concessions will not be affected. If franchise-related costs are removed (as permitted by the MSOs' proposal) prior to the uniform rate-setting process, the question of cross-subsidy is rendered moot, and LFAs remain free to negotiate for

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[14] NATOA also argues that uniform rate relief is unnecessary because cable operators can realize these same benefits by simply lowering rates to the lowest rate in the uniform rate region. See NATOA Comments at 7. However, as Cablevision correctly points out, creating uniform rates in this manner would require cable operators to permanently forego revenues which would far exceed any cost savings created by uniform rates. See Cablevision Comments at 3-7.

[15] See Florida LFAs Comments at 4.

the same franchise-specific benefits they do today without imposing costs on any franchise areas other than their own.[16] At the same time, if franchise-related costs are the same or substantially similar across the franchise areas to be included in the uniform rate-setting group, cable operators should have the option of including PEG and franchise-related costs in the uniform rate-setting process. As noted in MSOs' Comments, this flexibility will facilitate a greater level of uniformity.[17] Moreover, the MSOs' 5% rate variation test would preclude cable operators from including any franchise with franchise-specific costs substantially greater than those of other franchise areas in the uniform rate region.[18] As noted by the MCTC, spreading such minor franchise-specific costs across a uniform rate region

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[16] In addition, as noted by the MCTC, this separation of franchise-related costs provides the additional benefit of promoting political accountability among the LFAs who impose these costs on subscribers. See MCTC Comments at 13. Nor would a separate line item undermine rate uniformity, as some commenters suggest. See, e.g., Florida LFA Comments at 4. Subscribers are very accustomed to retail pricing which sets out "taxes and costs" as a separate line item. They are also accustomed to paying the same amount, aside from taxes, etc., for the same or substantially the same product. MSOs' proposal accomplishes both of these objectives by establishing a uniform base rate for the product at issue (i.e., cable service) and according the same treatment to cable franchise-related costs that are accorded to taxes and costs in all other industries.

[17] See MSOs' Comments at 13.

[18] The only exception would be where the costs are itemized and separately charged to subscribers in the respective franchise areas.

has a negligible affect on subscriber rates[19] and is more than outweighed by the substantial benefits of rate uniformity.

E. Uniform Rates Will Not Adversely Affect Competition.

The MSOs' proposal also answers NATOA's concern that uniform rates will enable a cable operator to act anti-competitively by manipulating the uniform rate region to target competitive areas for below-cost rate reductions.[20]

First, the rate variation limitation included in the MSOs' proposal would limit cable operators from affecting rates in any single rate region by more than a de minimis amount. As the Commission has found in the telephony realm, this minimal amount of pricing flexibility is not sufficient to manipulate competition.[21]

Second, NATOA's argument ignores the fact that cable competitors (such as DBS, SMATV, and MMDS) are not subject to rate regulation. Thus, even if a cable operator were to engage in the activity alleged by NATOA, cable competitors still would

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19 See MCTC Comments at 12.

20 See NATOA Comments at 5-6. Ameritech expresses a similar concern that uniform rates might enable a cable operator to subsidize rate cutting in competitive portions of the uniform rate region. See Ameritech Comments at 5.

21 See, e.g., Policy and Rules Concerning Rates For Dominant Carriers, 4 F.C.C.R. 2873, 3065-3066 (1989) (adopting a 5% pricing flexibility limit as more than sufficient to protect against anti-competitive pricing and improper cross-subsidization).

have unrestricted flexibility to meet and beat the operator's price in any area.[22]

F. There Is No Principled Reason To Limit Uniform Rate Regions to a Pre-Defined Geographic Area.

Several commenters requested that the Commission limit the application of uniform rates to a specific geographic region. Specifically, some LFAs opposed allowing uniform rate regions to cross state boundaries, citing problems of jurisdiction and administration.[23] Similarly, two commenters requested that uniform rate regions be limited to a single ADI.[24] However, these attempts to impose an artificial barrier on the use of uniform rates fail to consider the variety of contexts in which uniform rates may be effectively employed.

As the Commission recognized in the Notice, the most logical area in which to implement a uniform rate is across an integrated cluster of systems.[25] However, systems and system clusters do not conform to any single geographic model. A single system

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[22] In addition, to the extent the uniform rate-setting process causes rates to increase in certain franchise areas, this would promote additional competition in those areas.

[23] See Florida LFAs Comments at 4; NJ BPU Comments at 4; Ameritech Comments at 4-5 (uniform rate relief should be limited to contiguous franchise areas served by a single headend); MCTC Comments at 4-5 (uniform rate relief should be limited to intrastate regions, but interstate regions should not be precluded if the LFAs can all agree).

[24] See NJ Ratepayer Advocate Comments at 4 (uniform rate relief should not cross ADIs); MediaOne Comments at 3 (uniform rate relief should be limited to an ADI, with an option of petitioning for a larger area).

[25] See Notice at ¶¶ 11-13.

might serve two different ADIs or two different states. For example, Continental's system in the St. Louis, Missouri suburbs encompasses part of southern Illinois, and Continental's Seacost system serves subscribers in Portsmouth, New Hampshire and those across the river in Kittery, Maine in a different ADI. Preventing a cable operator from creating a single uniform system rate in such a scenario would only perpetuate another random rate discrepancy between two "substantially similar" service areas.

The preferred approach is the one advocated by the MSOs, which limits the inclusion of a franchise area in the uniform rate region based solely on whether it meets the objective regulated-channel-count and 5% rate-variation tests. This approach accords operators greater flexibility to accommodate their widely divergent system configurations, while limiting expansion of the uniform rate region to areas where such inclusion would be inefficient or harmful to subscribers.

Consistent with this logic, for example, most commenters agreed that there is no reason why uniform rate-setting should not be permissible across multiple ADIs.[26] These commenters recognize that, despite differing must-carry obligations, systems in different ADIs may nonetheless have identical or substantially

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[26] See, e.g., Adelphia Comments at 2-3; Blade Comments at 4-5; Cablevision Comments at 10-11; CRB Comments at 3-5; MCTC Comments at 4; NJ BPU Comments at 9-10; Time Warner Comments at 14-16.

similar channel counts. A prime example is in New Jersey where uniform rates have already been created across multiple ADIs.[27]

G. **Uniform Rates Will Require Fewer Regulatory Resources.**

NATOA and the Florida LFAs also argue that uniform rate-setting will impose additional burdens on regulators and require increased regulatory resources.[28] This argument is contrary to the conclusions of regulatory bodies that have actual experience in reviewing uniform rates. Indeed, the NJ BPU specifically adopted uniform rates as a way of lessening its regulatory burdens.[29] Similarly, the MCTC found that uniform rates greatly simplified the rate review process.[30]

Additional reductions in regulatory burdens would be seen at the Commission. Over the past three years, the Commission has processed over 11,000 complaints requesting a separate review of franchise-specific rates. In addition, each appeal from an LFA rate order requires the Commission to conduct a similar, independent review, with the possibility of another independent appeal. By contrast, uniform rates will allow the Commission to review just one rate per uniform rate region. In this time of limited government resources, the potential administrative

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27 See NJ BPU Comments at 9-10.

28 See NATOA Comments at 6; Florida LFAs Comments at 5-6.

29 See NJ BPU Comments at 3.

30 See MCTC Comments at 6.

savings that will accompany such a streamlined approach take on particular significance.[31]

H. An Ample Record Exists For The Establishment Of Uniform Rate Rules.

Ameritech asks the Commission to stall this proceeding, arguing that the Commission has not yet developed a substantial record documenting that uniform rate relief is necessary.[32]

The record is more than adequate to justify Commission action at this time. The Notice was issued based on the Commission's conclusion, after three years of experience with cable rate regulation, that: (1) non-uniform rates were creating consumer confusion, inefficiency, and a lack of price competition;[33] and (2) the increasing level of clustering activity in the cable industry warranted a new, more appropriate regulatory approach.[34] The comments submitted in this proceeding substantiate both of these propositions. Any further delays in implementing uniform rate-setting will serve no one except for cable's competitors, such as Ameritech.

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[31] As noted in MSOs' Comments, this reduction in administrative burdens also complies with the Commission's obligation to reduce such burdens for cable operators. See MSOs' Comments at 3 (citing sections 623(b)(2)(A) and 601(6) of the Communications Act).

[32] See Ameritech Comments at 3.

[33] See Notice at ¶ 12.

[34] See id. at ¶ 11.

I. Uniform Rate-Setting Across Multiple Franchise Areas Will Not Affect Cable Operators' Obligation to Comply With the Uniform Rate Structure Requirement Within A Franchise Area.

Finally, the Florida LFAs argue that uniform rate-setting will prevent LFAs from enforcing the uniform rate structure requirement of 47 U.S.C. § 543(d) by creating a uniform rate region larger than the individual franchise area.[35]

Uniform rate-setting across multiple franchise areas will not affect, and is fully consistent with, the requirement that cable operators establish a uniform rate structure in a particular franchise area. Cable operators choosing to implement uniform rates will still be precluded from having different rate structures in different parts of a franchise area or from dropping the rates in one portion of a franchise area to meet a competitor's pricing (other than in MDUs, as permitted by section 303(b)(2) of the Telecommunications Act of 1996). Similarly, LFAs will still have the same responsibility to enforce this requirement in their franchise area. The uniform rate-setting approach at issue in this proceeding would merely give cable operators the option of extending the benefits of rate uniformity across a wider region.

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[35] See Florida LFAs Comments at 2-3. In addition, the Florida LFAs claim that uniform rate relief is inconsistent with the Commission's decision in Dynamic Cablevision of Florida, Limited, 10 F.C.C.R. 7738 (1995). Florida LFAs Comments at 3. However, that case merely held that two different regulatory bodies could not both certify to regulate a cable operator's rates for the same franchise area and has no relevance to the implementation of uniform rates across multiple franchise areas.

CONCLUSION

The majority of commenters fully support the Commission's proposal to implement a uniform rate-setting methodology. In addition, as demonstrated above, MSOs' uniform rate-setting proposal addresses each of the concerns raised by commenters in this proceeding. Accordingly, the MSOs respectfully urge the Commission to expeditiously issue rules allowing cable operators to set uniform rates across multiple franchise areas in accordance with the MSOs' proposal.

Respectfully Submitted,

CONTINENTAL CABLEVISION, INC.
TELE-COMMUNICATIONS, INC.

Michael H. Hammer

Michael H. Hammer
Francis M. Buono
Todd G. Hartman

WILLKIE FARR & GALLAGHER
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20036
(202) 328-8000

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